

Amendment Number 1
to
Contract Number DIR-SC-03-223
between
State of Texas, acting by and through the Department of Information Resources
and
NORTHROP GRUMMAN INFORMATION TECHNOLOGY, INC.

This Amendment Number 1 to Contract Number DIR-SC-03-223 (Contract) is between the Department of Information Resources (DIR) and Northrop Grumman Information Technology, Inc. (Vendor). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. All references to Texas Building and Procurement Commission (TBPC) are hereby revised and replaced with Texas Comptroller of Public Accounts (CPA).
2. All references to Catalog Information System Vendors (CISV) are hereby deleted.
3. **Contract, Section 1, Contract Term**, is hereby amended as follows:

The term of this Contract is amended through July 1, 2009. Prior to the expiration date of the term, DIR and Vendor may extend the Contract upon mutual agreement, for up to one (1) optional one-year term. Upon expiration or termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as it relates to Supplemental Agreements entered into by Customers prior to such expiration or termination.

4. **Contract, Section 3, Definitions, Subsection B., Customer**, is hereby restated in its entirety as follows:

B. Customer - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;

- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
 - 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
 - 9) A nonprofit organization that provides affordable housing.
5. **Contract, Section 3, Subsection M. Go DIRECT Coordinator**, is re-titled, **GoDIRECT Sales @dir.state.tx.us.**, and is hereby restated in its entirety as follows:

M. Refers to the system DIR uses to collect the Contract reporting data on behalf of the State and the authorized Customers.

6. **Contract, Section 3, Definition**, is hereby amended to add **Subsection N.**, as follows:

N. CPA – refers to the Texas Comptroller of Public Accounts

7. **Contract, Section 4, Entire Agreement and Order of Precedence**, is hereby restated in its entirety as follows:

This Contract; Appendix A, Standard Clauses State of Texas, DIR Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-03-014, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-03-14, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, and then Appendix B, and then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

8. **Contract, Section 19, Internet Access to Contract and Pricing Information** is re-titled **Contract Fulfillment and Promotion**, and is hereby restated in its entirety as follows:

A. Service, Sales and Support of the Contract

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for services available under the Contract shall be processed through the Contract.

B. Internet Access to Contract and Pricing Information

1) Vendor Website

Within thirty (30) days from the effective date of the Contract, Vendor will establish and maintain a website specific to the service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the services offered, service specifications, Contract pricing, contact information for Vendor, instructions for obtaining quotes and placing Purchase Orders. The Vendor's website shall list the DIR Contract number, reference the DIR Go DIRECT program, display the DIR logo in accordance with the requirements in paragraph D of this Section, and contain a link to the DIR website for the Contract.

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

3) Website Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated within Section 4 of the Contract.

4) Website Changes

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

9. **Contract Section 20, Reporting and Administrative Fees**, is hereby restated in its entirety as follows:

Reporting Responsibility

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.00. Vendor shall be responsible for reporting all services purchased under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer. DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books at DIR's expense.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to GoDIRect Sales @dir.state.tx.us. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

b) Reports shall be due in accordance with the CPA rules.

4) DIR Administrative Fee

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The administrative fee shall be specified in the Contract. Payment of the administrative fee shall be due on the fifteenth (15th) calendar day after the close of the previous month period.

b) Vendor shall reference the DIR Contract number on any remittance instruments.

5) Accurate and Timely Submission of Reports

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in Appendix A, Section 7, subsection 3, at DIR's expense.

10. Contract, Section 21, Notices is re-titled Notification, and is hereby restated in its entirety as follows:

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Sherri Parks, Director
Contracting & Procurement Services
Department of Information Resources

If sent to the Vendor:

Tommy Johnson
Northrop Grumman Information
Technology, Inc.

300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

7745 Chevy Chase Drive, Bldg 5, Suite 100
Austin, TX 78752
Phone: (512) 377-2222 x352
Facsimile: (512) 419-9311
Email: tommy.johnson@ngc.com

11. **Appendix A, Section 1, Indemnification Clause**, is hereby restated in its entirety as follows:

1) INDEPENDENT CONTRACTOR

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.

2) Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and DIR Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, FROM AND AGAINST LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND COSTS, INCLUDING ATTORNEY FEES, resulting from any negligent or wrongful acts or omissions of the Vendor or its employees, subcontractors, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders or Supplemental Agreement issued under the Contract. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

3) Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and DIR Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

4) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL

PAY THE COST OF REPAIR, OF THE PROPERTY. SUCH COST SHALL BE MUTUAL AGREED TO BY THE CUSTOMER AND VENDOR AND SHALL BE DUE AND PAYABLE BY THE VENDOR ONE HUNDRED EIGHTY (180) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

12. **Appendix A, Section 2, Non-Assignment Clause** is re-titled **Assignment**, and is hereby restated in its entirety as follows:

DIR or Vendor may not assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

13. **Appendix A, Section 5, Vendor Certifications**, is hereby restated in its entirety as follows:

Vendor certifies that it: (i) has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract, (ii) is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate, (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage, (iv) has not received payment from DIR or any of its employees for participating in the preparation of the Contract, (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate, (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract, (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration, and (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; and (ix) under Section 2155.006, Government Code, Vendor certifies that the individual or business entity in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

14. **Appendix A, Section 7, Records** is re-titled **Records and Audit**, and is hereby restated in its entirety as follows:

1) Acceptance of funds under the Contract by Vendor acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: Customer name, invoice date, invoice number, description, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to DIR, including the compliance checks designated by DIR, the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the Vendor's books and records shall be available to DIR staff and designees as needed. Vendor shall provide adequate office space to DIR staff during the performance of Compliance Check.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Vendor through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

15. **Appendix A Section 8, Ability to Conduct Business in Texas**, is hereby restated in its entirety as follows:

Vendor shall be an entity authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas.

16. **Appendix A, Section 9, Invalid Term or Condition**, is hereby restated in its entirety as follows:

1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR

makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.

2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

17. **Appendix A, Section 10, Enforcement of Contract and Dispute Resolution**, is hereby restated in its entirety as follows:

- a) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- b) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph 1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

18. **Appendix A, Section 12, Modification of Contract Terms and/or Amendments**, is hereby restated in its entirety as follows:

- a) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- b) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Vendor may be added in a Purchase Order or Supplemental Agreement and given effect. No additional term or condition added in a Purchase Order or Supplemental Agreement issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order or Supplemental Agreement and the Contract, the Contract term shall control.

19. **Appendix A, Section 15, Trade Show Participation**, is hereby restated in its entirety as follows:

At DIR's discretion, Vendor may be required to participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's expense, includes providing a manned booth display or similar presence. DIR will provide four (4) months advance notice of any required participation. Vendor must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's booth.

20. **Appendix A Section 17, Use of Subcontractors**, is hereby restated in its entirety as follows:

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

21. **Appendix A, Section 18, Force Majeure**, is hereby restated in its entirety as follows:

DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order or Supplemental Agreement in accordance with Appendix A, Section 20, Termination for Convenience, if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

22. **Appendix A, Section 19, Termination for Non-Appropriation**, is hereby restated in its entirety as follows:

a) Termination for Non-Appropriation

For state agency Customers, Vendor will be provided thirty (30) calendar days advance written notice. For non-state agency Customers, Vendor will be provided ten (10) calendar advance written notice, subject to negotiation of a longer notice period in the applicable Supplemental Agreement. In the event of such termination for non-appropriation, Customer shall pay Vendor for completed services performed through the effective date of termination and work in progress to the effective date of termination.

b) Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 9.A, Notices, of intent to terminate.

23. **Appendix A, Section 20, Termination for Convenience**, is hereby restated in its entirety as follows:

In the event of such termination for convenience, Customer shall pay Vendor for completed services performed through the effective date of termination, work in progress, and reasonable severance costs incurred as a result of such full or partial termination and the

unamortized hardware, software, and lease cost. DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. Customers may terminate Supplemental Agreements or Purchase Order for convenience, upon thirty (30) days advance written notice to the Vendor. In the event of such notice of termination for convenience, Customer shall pay Vendor for completed services performed through the effective date of termination, work in progress, and reasonable severance costs incurred as a result of such full or partial termination and the unamortized hardware, software, and lease cost.

24. Appendix A, Section 21, Termination for Cause, is hereby restated in its entirety as follows:

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Vendor may terminate a Purchase Order or Supplemental Agreement upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or Supplemental Agreement in accordance with Section 3.B.2 above. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

25. Appendix A, Section 25, Handling of Written Complaints is re-titled **Notification**, and is hereby restated in its entirety as follows:

a) Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

b) Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, Texas 78701
(512) 475-4759, facsimile

26. **Appendix A**, is hereby amended to add **new Section 26, Choice of Law**, as follows:

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

27. **Appendix A**, is hereby amended to add **new Section 27, Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE**, as follows:

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS DIR CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, FROM AND AGAINST LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND COSTS, INCLUDING ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

28. **Appendix A**, is hereby amended to add **new Section 28, Responsibility for Actions**, as follows:

Vendor is solely responsible for its actions and those of its employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

29. **Appendix A**, is hereby amended to add **new Section 29, Limitation of Liability**, as follows:

For any claim or cause of action arising under or related to the effective Supplemental Agreement or Purchase Order: i) none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total

amount paid to Vendor under the effective Supplemental Agreement or Purchase Order during the twelve months immediately preceding the accrual of the claim or cause of action.

30. **Appendix A**, is hereby amended to add **new Section 30, Purchase of Commodity Items (Applicable to State Agency Purchases only)**, as follows:

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 30.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from Subsection 30.

31. **Appendix A**, is hereby amended to add **new Section 31, Performance Review Meetings**, as follows:

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

32. **Appendix A**, is hereby amended to add **new Section 32, Overcharges**, as follows:

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

33. **Appendix A**, is hereby amended to add **new Section 33, Prohibited Conduct**, is as follows:

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

34. **Appendix A**, is hereby amended to add **new Section 34, Captions**, as follows:

The captions contained in the Contract and its Appendices are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

35. All other terms and conditions of the Contract, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment 1, and then the Contract.

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of July 1, 2008.

Northrop Grumman Information Technology, Inc.

Authorized By: signature on file

Name: Tommy E. Johnson

Title: Contracts Manager

Date: 8/13/08

**The State of Texas, acting by and through the
Department of Information Resources.**

Authorized By: signature on file

Name: Cindy Reed

Title: Deputy Executive Director
Operations & Statewide Technology Sourcing

Date: 8/14/08

Legal: 8/13/08